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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975
No. 75-950

STATE OF CALIFORNIA,

Petitioner,

vs.

MARK LEE HARRIS,

Respondent.

On Writ of Certiorari to the California Supreme Court

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

A PETITION FOR WRIT OF CERTIORARI in the above-entitled case was served on respondent's counsel. This brief is hereby submitted in response to said petition. For purpose of this brief, respondent hereby adopts the material in the petition under the headings "Opinions Below," "Jurisdiction," "Constitutional Provisions Involved," "Statement of the Case," "Statement of the Facts," "Appendix A," and Appendix B."

QUESTION PRESENTED

Whether police officers can culminate a fruitless street detention that fails to ripen into probable cause to arrest by an even greater intrusion--involuntarily transporting the suspect, handcuffed in a patrol car, some three blocks out of his way for the purpose of possible witness identification when it was just as simple to bring the victims to the scene of the detention or to arrange a later confrontation?

REASONS WHY A WRIT OF CERTIORARI SHOULD BE DENIED

The California Supreme Court correctly decided the issue of whether the respondent was lawfully transported to the scene of a crime absent probable cause to arrest. On two previous occasions this Court has held that the involuntary transportation of a suspect to a police station for questioning or fingerprinting constitutes an unlawful arrest if the transporting officers did not have probable cause to arrest the suspect. The distinction now raised by petitioner is that the involuntary transportation of a suspect to the scene of a crime or to

some location other than a police station, is somehow different from the involuntary transportation of a suspect to a police station and is a reasonable seizure of the person even without probable cause to arrest. Any attempt to distinguish the instant case on the basis of where the suspect was taken ignores the basic Fourth Amendment insult inherent when the suspect is seized and involuntarily removed.

Furthermore, petitioner's entire premise that a temporary detention need not be confined to the scene of the detention but can be moved from place to place at the officer's will completely undermines this Court's carefully delineated rules regarding the scope of intrusion allowed without probable cause to arrest.

ARGUMENT

INVOLUNTARY TRANSPORTATION OF A MERE SUSPECT IN A PATROL VEHICLE FROM THE POINT OF INITIAL DETENTION TO ANOTHER LOCATION SELECTED BY THE POLICE CONSTITUTES A SEIZURE OF THE PERSON, MORE COMMONLY KNOWN AS AN "ARREST," AND AN ARREST WITHOUT A WARRANT OR PROBABLE CAUSE IS UNREASONABLE PER SE WITHIN THE PURVIEW

OF THE FOURTH AMENDMENT.

Previous decisions of this Court have upheld the constitutionality of police conduct in stopping and questioning citizens under suspicious circumstances, in performing a careful exploration of the outer surfaces of the suspect's clothing, and, under certain circumstances, to reach into the suspect's clothing for the purpose of seizing suspected weapons. Terry v. Ohio, 392 U.S. 1 (1968); Sibron v. New York, 392 U.S. 40 (1968) Allowing police officers the right to stop, question, frisk and, under limited circumstances, to search for a weapon have been considered reasonable under the Fourth Amendment because it strikes a balance between a person's interest in immunity from policy interference and the community's interest in law enforcement. Terry v. Ohio, 392 U.S. 1, 20-21 (1968) The rationale for allowing such police interference with the citizen-suspect without probable cause to arrest is simple: "A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining

additional information may be most reasonable in light of the facts known to the officers at the time." Adams v. Williams, 407 U.S. 143, 147 (1972)

An arrest, on the other hand, being "a wholly different kind of intrusion upon individual freedom from a limited search for weapons" (Terry v. Ohio, 392 U.S. 1, 26 (1968), constitutes a seizure of the person and an arrest without a warrant or probable cause is 'unreasonable' within the purview of the Fourth Amendment. Beck v. Ohio, 367 U.S. 643 (1964); Henry v. United States, 361 U.S. 98 (1959). When a person is handcuffed by police officers, placed in the back of a police vehicle and driven several blocks to the scene of a crime, that person has been arrested.[1]

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1. "Arrest" was defined by the California legislature in 1872: "An arrest is taking a person into custody, in a case and in the manner authorized by law." Cal. Pen. Code. §834 (West 1970); See also, B. Witkin, California Criminal Procedure, §89, P. 91 (1963) One division of the California Court of Appeal, interpreting section 834 of the Penal Code held: "The essential elements of an arrest are: (1) taking a person into custody;

Petitioner suggests that certiorari should be granted in order to decide the question of whether a police officer during the course of a valid investigatory detention may transport a suspect to a different location without probable cause to arrest. It is the respondent's position that question has already been answered by this Court in the negative in Davis v. Mississippi, 394 U.S. 721 (1968) and Morales v. New York, 396 U.S. 102 (1969). See also, Brown v. Illinois, 422 U.S. 590 (1975).

The issue was squarely confronted and determined when the Court decided Davis v. Mississippi, 394 U.S. 721 (1968)

In Davis, Meridian police officers, while investigating a rape that occurred on December 2, picked Davis up on

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(2) actual restraint of the person or his submission to custody." People v. Hatcher, 2 Cal. App.3d 71, 75 (1969). Section 835 of the Penal Code provides that: "An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention." (Cal. Pen. Code, §835 (West 1970)

December 3 and brought him to the police station for the purpose of fingerprinting him. After taking his fingerprints and asking him some routine questions, Davis was released. He was intermittently questioned by the police between December 3 and December 7, 1965. On December 12, the police picked Davis up and drove him some 90 miles to Jackson where he was confined over night in jail. The following day, Davis was returned to Meridian where he was again confined in jail. On December 14, while still in jail, a second set of fingerprints was taken. The second set of prints was sent to the Federal Bureau of Investigation for comparison with prints taken from the window of the victim's home. Davis' fingerprints matched those left by the rapist. At trial, Davis argued for exclusion of the [December 14] prints on the ground that said prints were the fruit of an unlawful detention. His motion to suppress the prints was denied and he was subsequently convicted.

The United States Supreme Court granted certiorari on the limited issue of:

"Whether the introduction into evidence at petitioner's trial of his fingerprints, taken as a result of petitioner's illegal arrest, violated petitioner's rights under the Fourth and Fourteenth Amendments." 393 U.S. 821 (1968)

The Court first determined that the prints introduced at trial, taken on December 14, were clearly the product of an arrest that the State conceded was without a warrant or probable cause.

The Court then considered and determined the issue of whether the prints taken on December 3 were admissible. It is this portion of the Court's opinion that controls the instant case.

The State of Mississippi argued that the prints taken on December 3 were taken during a detention which "was of a type which does not require probable cause." Id., at 723. "The detention occurred during the investigatory rather than the accusatory stage and thus was not a seizure requiring probable cause," according to the State. To this argument the Court gave a resounding negative reply:

But to argue that the Fourth Amendment does not apply to the investigatory stage is fundamentally to misconceive the purposes of the Fourth Amendment. Investigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignomity incident to involuntary detention. Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed "arrests" or "investigatory detentions." Id., at 726-727.

Whether a suspect has been "arrested" cannot and should not depend upon where the police decide to transport him. No constitutionally meaningful difference can attach to the place where the suspect is taken--the station or the scene. It is the involuntary transportation, which requires handcuffing, that transforms a Terry stop to a Davis/Morales arrest. Involuntary transportation of a suspect in a police vehicle always entails a complete loss of freedom of movement and a total restraint on the citizen. The compulsory transportation of a suspect

in a police vehicle to wherever the driver takes him puts the suspect "in what was the equivalent of a police station." Seals v. United States, 325 F.2d 1006, 1008 (D. C. Cir. 1963)[2]

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2. One commentator has noted:

> Efforts to characterize any movement of a suspect as an arrest only serve to cloud the issue. The center of focus should be the degree of offensiveness to the individual involved in a particular movement. It should not be deemed unreasonably offensive to ask a person to walk a short distance to a call box or a patrol car. However, transporting an individual to the scene of the crime or a police station would be so offensive an interference with one's privacy as to be unconstitutionally unreasonable without probable cause to arrest. Comment, Constitutional Limitations on Pre-Arrest Investigations, 15 U.C.L.A. L.Rev. 1031 (1968)

CONCLUSION

For the foregoing reasons, respondent respectfully requests that this petition for a writ of certiorari be denied.

Respectfully submitted,

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